

Appendix XV

FAQs: Gifts and Donations

1. Can the Agency accept gifts and donations as an alliance partner's contribution to a GDA alliance?

Yes. USAID has the authority to accept gifts and donations, as either cash or in-kind gifts, for carrying out its official functions. Section 635(d) of the Foreign Assistance Act of 1961, as amended (FAA), the Agency's principal gift authority, provides that the Agency can "accept and use in furtherance of [the FAA], money, funds, property, and services of any kind made available by gift, devise, bequest, grant or otherwise for such purpose."

"Gifts" as nonreciprocal, voluntary transfers of assets from foreign governments, private organizations, individuals, or others to USAID. "Donations" as monies and materials given by private persons and organizations to USAID without receiving anything in exchange. Both terms are defined in the Agency's Automated Directive System (ADS) Glossary, and the term "donation" is used interchangeably with the term "gift" for the purposes of ADS Chapter 628 (Gifts and Donations and Dollar Trust Fund Management) and in this document.

Gifts can only be accepted by Agency officials who have been delegated the authority to accept them. See ADS Chapter 103 (Delegations of Authority) for the list of officials authorized to accept gifts on behalf of the Agency. Such officials are responsible for ensuring, prior to acceptance of a gift, that it will be used in furtherance of the purposes of the FAA, and that other criteria applicable to its acceptance have been met. See question 2 below for information regarding the Agency policy and procedures for accepting gifts.

2. What is the Agency procedure for accepting gifts and donations?

ADS Chapter 628 sets forth the Agency policy and procedures for acceptance of gifts and donations, including the criteria that must be satisfied prior to their acceptance as well as the financial management rules and procedures that apply to gifts. ADS 628 also includes a sample gift acceptance letter and a suggested format for receipt of in-kind gifts.

For questions regarding a specific gift, please consult with your Regional Legal Advisor or your legal backstop in the Office of General Counsel. For questions related to the financial management rules and procedures applicable to gifts, please contact the Financial Management Office.

3. How does the Agency define or categorize gifts?

ADS 628 divides gifts into the following three broad categories and sets forth the criteria for accepting each type of gift. Briefly summarized, the categories include:

1) *Conditional gifts*: gifts made for a specific purpose or with conditions on their use. Before accepting a conditional gift, the Agency official delegated to accept the gift must ensure that specific criteria for accepting the gift have been met. The criteria are set forth at question 4, below.

2) *Unconditional gifts*: gifts made with no conditions on their use, which therefore can be used for any purpose authorized in the FAA. Before accepting an unconditional gift, the Agency official delegated to accept the gift must ensure not only that the gift will be used in

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furtherance of the FAA, but that acceptance of the gift will not result in, or create the appearance of, a conflict of interest.

3) *In-kind gifts*: gifts of property or materials other than cash. Before accepting an in-kind gift, the Agency official delegated to accept the gift must ensure that the criteria for accepting the gift – which mirror those criteria for conditional gifts, outlined a question 4, below- have been met. The Agency official delegated to accept the gift must determine its fair market value (FMV) and report the value to FM. (Note that a proposal to accept in-kind donations (for instance equipment or other property) from outside parties will present special issues, including valuation, titling, and potential storage/delivery arrangements. Given these administrative requirements, USAID generally prefers not to directly receive in-kind donations. Rather, we typically encourage potential donors of property to work with NGOs that have established procedures for accepting such donations.

4. Can a donor impose conditions on the Agency for use of its gift or donation and can the Agency agree to such conditions?

Yes to both. A donor can impose conditions on its gift to the Agency, which conditions can be accepted by the Agency if the Agency official delegated authority to accept the gift determines that the conditions can be agreed to by the Agency. Acceptance of conditional gifts imposes a fiduciary responsibility on the Agency to ensure that the funds are used for the purpose(s) for which they were given. Therefore, before accepting a conditional gift, an Agency official delegated authority to accept it must ensure that the gift can be obligated (if a gift of cash) and will be used in accordance with the terms and conditions of the gift. Additionally, before accepting a conditional gift, the Agency official delegated authority to accept the gift must certify that the following criteria have been met:

1. The Agency can comply with conditions of the gift and still use the gift in furtherance of the FAA;
2. The Agency can comply with conditions of the gift in a reasonable and cost efficient manner; and,
3. Acceptance of the gift will not result in, or create the appearance of, a conflict of interest.

The accepting official should document the decision as to whether USAID accepts the conditions and inform the donor in writing of the decision.

See ADS 628 for specific guidance on conditional gifts and contact your Regional Legal Advisor or legal backstop in the Office of General Counsel for guidance regarding a specific gift.

5. Are cash gifts and donations subject to apportionment?

Yes. Cash gifts and donations *are* subject to apportionment under OMB Circular A-34. However, such gifts are not appropriated funds and therefore are not subject to the legislative and regulatory requirements applicable to appropriated funds.

6. What effect do gifts and donations have on a mission's appropriated operating year budget (OYB)?

None. As noted in question 5, above, cash gifts and donations are not appropriated funds and therefore are not subject to the legislative and regulatory requirements applicable to appropriated funds. Gifts and donations do not offset appropriated funds, are not subject to OMB "scoring," and do not impact a mission's OYB.

7. Are gifts and donations to the Agency tax deductible by their donors?

Gifts and donations to the Agency by individuals and corporations are considered to be tax-deductible charitable contributions under Section 170 of the Internal Revenue Code. Please note that donors are solely responsible for determining the tax consequences of their cash gifts and donations to the Agency, and for claiming any tax benefit available under the Internal Revenue Code for making a gift or donation.

8. Have gifts and donations been used as an alliance partner's contribution under GDA or other Agency alliances?

Yes. Here are two examples.

1. Under the ChevronTexaco (CT)-USAID Enterprise Development Alliance in Angola, CT endeavors to contribute up to \$10 million to the alliance through the donation of conditional gifts to the Agency that will support the implementation of specific activities in Angola. The first alliance activity, the Development Relief Activity (DRA), seeks to assist at least 150,000 families that have been affected by the civil war (demobilized soldiers and internally displaced persons) to increase agricultural production in the provinces of Benguela, Bie, Huambo, Huila, Malanje, and Kwanza. DRA will also expand rural household incomes and develop small and medium productive enterprises. CT has donated \$2 million of a planned \$4 million gift to the Agency as a conditional gift to support DRA.

b) British Petroleum (BP) donated \$1.5 million to the Agency as a conditional gift to support USAID/Georgia's Winter Heat Assistance Program. The program provides a stipend to low-income Georgians to assist them in paying their electricity bills, and in part, to offset increased prices resulting from USAID-sponsored privatization. The program, implemented through a USAID-funded instrument to which BP has donated, identifies qualifying Georgian citizens, verifies that they have received service and in what amount, and then computes the service charges which are payable to the service provider under the program.

9. Can the Agency solicit gifts or donations to support alliances?

Yes. USAID has the authority to solicit contributions on its own behalf under its gift authority, Section 635(d) of the FAA, and under Section 25 of the Department of State Basic Authorities Act of 1956, as amended, 22 U.S.C. Section 2697. In addition, Agency officials have the authority to engage in fundraising for USAID or others under certain provisions of the FAA which establish U.S. policy to encourage the participation of the private sector in the development process.

However, there are a number of restrictions or conditions that apply to such fundraising.

1. The agency may not solicit contributions for the travel expenses of Government employees;

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2. Solicitations must be for funds to be used in connection with the agency's authority (e.g., funds solicited under the FAA must be used for agency programs or the foreign assistance programs of other organizations);
3. Solicitations must be structured to avoid any appearance that a contributor will receive preferential treatment in its dealings with USAID (or would face any kind of discriminatory treatment if it declines to contribute);
4. The solicitation must not include covert or deceptive activities.

The Office of General Counsel has issued an opinion on soliciting funds entitled "USAID Solicitation Campaigns for Agency Programs or the Foreign Assistance Programs of Other Entities" which provides a detailed explanation of the legal parameters for soliciting gifts. This opinion is included in Attachment C to the GDA guidance document entitled "Tools for Alliance Builders." It is *strongly recommended* that you consult with your Regional Legal Advisor or legal backstop in the Office of General Counsel for advice and counsel regarding specific situations, or to answer any questions you may have regarding the referenced legal opinion.

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